



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-07]

**Affirmatively Furthering Fair Housing Assessment Tool:
Announcement of Final Approved Document**

AGENCY: Office of the Assistance Secretary for Fair Housing and Equal Opportunity,
HUD.

ACTION: Notice.

SUMMARY: This notice announces the Assessment Tool developed by HUD for use by local governments that receive Community Development Block Grants (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), or Housing for Persons with AIDS (HOPWA) formula funding from HUD when conducting and submitting their own Assessment of Fair Housing (AFH). The Assessment Tool will also be used for AFHs conducted by joint and regional collaborations between: (1) such local governments; (2) one or more such local governments with one or more public housing agency (PHA) partners; and (3) other collaborations in which such a local government is designed as the lead for the collaboration. For purposes of this Assessment Tool, no AFH will be due before October 4, 2016. Please see HUD's webpage at <https://www.hudexchange.info/programs/affh/> for the schedule of submission dates of AFHs.

The requirement to conduct and submit an AFH is set forth in HUD's Affirmatively Furthering Fair Housing (AFFH) regulations, and this Assessment Tool has completed the notice and comment process required by the Paperwork Reduction Act (PRA), been reviewed by the Office of Management and Budget (OMB) and approved.

The Assessment Tool announced in this notice, and the guidance accompanying this Assessment Tool (the Guidebook) can be found at

<https://www.hudexchange.info/programs/affh/>.

This Federal Register notice also highlights changes made by HUD to the Assessment Tool based on comments submitted in response to HUD's July 16, 2015, notice, which solicited comment on the Assessment Tool for a period of 30 days. HUD will issue separate Assessment Tools for use by States and Insular areas and PHAs that will also be used for: (1) joint and regional collaborations where the State or Insular Area is designated as the lead entity; and (2) joint collaborations with only PHA partners.

FOR FURTHER INFORMATION CONTACT: George D. Williams, Sr., Deputy Assistant Secretary for Policy, Legislative Initiatives and Outreach, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW, Room 5246, Washington, D.C. 20410; telephone number 866-234-2689 (toll-free) or 202-402-1432 (local). Individuals who are deaf or hard of hearing and individuals with speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The AFFH Proposed Rule

On July 19, 2013, at 78 FR 43710, HUD published for public comment its AFFH proposed rule. The July 19, 2013, AFFH rule proposed a new approach that would enable program participants to more fully incorporate fair housing considerations into their existing planning processes and assist them in complying with their duty to

affirmatively further fair housing as required by the Fair Housing Act (Title VIII of the Civil Rights Act) and other authorities. The new process, the Assessment of Fair Housing (AFH), builds upon and refines the prior fair housing planning process, called the analysis of impediments to fair housing choice (AI). As part of the new AFH process HUD advised that it would issue an “Assessment Tool” for use by program participants in completing and submitting their AFHs. The Assessment Tool, which includes instructions and nationally-uniform data provided by HUD, consists of a series of questions designed to help program participants identify, among other things, areas of racially and ethnically concentrated areas of poverty, patterns of integration and segregation, disparities in access to opportunity, and disproportionate housing needs.

At the time of publication of the July 19, 2013, AFFH proposed rule, HUD also posted and sought public comment on a draft “Data Documentation” paper online at http://www.huduser.gov/portal/affht_pt.html and at <https://www.hudexchange.info/programs/affh/> (under the heading Data Methodology). HUD requested public comments on the categories, sources, and format of data that would be provided by HUD to program participants to assist them in completing their AFH, and many program participants responded with comments on the Data Documentation.

The 60-Day Notice on the Assessment Tool (Initial Assessment Tool)

On September 26, 2014, at 79 FR 57949, HUD issued a notice for public comment on the Assessment Tool found at http://www.huduser.gov/portal/affht_pt.html. As noted in the Summary, the Assessment Tool was designed for use by local governments that receive CDBG, HOME, ESG, or HOPWA formula funding from HUD

when conducting and submitting their own AFH; that is the Assessment Tool was designed for use by local governments and consortia required to submit consolidated plans under HUD's Consolidated Plan regulations, codified in 24 CFR part 91, specifically subparts C and E, which pertain to local governments and consortia.¹ In this notice, HUD uses the term "local governments" to refer to those consolidated plan program participants for which this tool is primarily designed. The Assessment Tool is also designed for joint and regional AFHs conducted by joint and regional collaborations between: (1) such local governments; (2) one or more such local governments with one or more PHA partners; and (3) other collaborations in which such a local government is designed as the lead for the collaboration. While the Assessment Tool was designed for local governments and for joint or regional submissions by local governments and PHAs, HUD invited comments by all types of program participants, as it, "present[ed] the basic structure of the Assessment Tool to be used by all program participants, and is illustrative of the questions that will be asked of all program participants."

In developing the Assessment Tool, HUD had four key objectives in mind. First, the Assessment Tool must ask questions that would be sufficient to enable program participants to perform a meaningful assessment of key fair housing issues and contributing factors² and set meaningful fair housing goals and priorities. Second, the Assessment Tool must clearly convey the analysis of fair housing issues and contributing factors that program participants must undertake in order for an AFH to be accepted by

¹ In HUD's AFFH proposed rule published on July 19, 2013, at 78 FR 43710, HUD noted that a consortium participating in HUD's HOME Investment Partnerships program (HOME program), and which term (consortium) is defined 24 CFR 91.5, must submit an AFH. HUD stated that a HOME consortium is considered a single unit of general local government (see 78 FR at 43731).

² The term "fair housing determinants" was changed to "fair housing contributing factors" in the AFFH final rule. This notice therefore uses the term "fair housing contributing factors."

HUD. Third, the Assessment Tool must be designed so program participants would be able to use it to prepare an AFH that would be accepted by HUD without unnecessary burden. Fourth, the Assessment Tool must facilitate HUD's review of the AFHs submitted by program participants, since the AFFH rule requires HUD to determine, within a certain period of time, whether to accept or not accept each AFH or revised AFH submitted to HUD.

With these objectives in mind, HUD issued a first version of the Assessment Tool (Initial Assessment Tool) for public comment for a period of 60 days. The 60-day notice provided a detailed description of the five main sections of the Assessment Tool: Section I – Cover Sheet and Certification; Section II – Executive Summary; Section III – Community Participation Process; Section IV– Analysis; and Section V – Fair Housing Goals and Priorities.

By the close of the comment period on November 25, 2014, HUD received 281 public comments. Commenters included PHAs, grantees of Community Development Block Grants (CDBG), including States and local governments, advocacy groups, nonprofit organizations, and various individuals. All public comments received in response to the 60-day notice can be found at:

<http://www.regulations.gov/#!documentDetail;D=HUD-2014-0080-0001>.

The January 15, 2015 Notice on AFH Staggered Submission Deadlines

On January 15, 2015, at 80 FR 2062, HUD published a notice that solicited public comment on a staggered submission deadline for AFHs to be submitted for specific types of program participants. In the January 2015 notice, HUD advised that it was considering

providing certain HUD program participants—States, Insular Areas, qualified PHAs,³ and jurisdictions receiving a CDBG grant under \$500,000 with the option of submitting their first AFH at a date later than would otherwise be required of entitlement jurisdictions. In addition to proposing a staggered submission deadline, HUD had previously announced that it would be developing separate assessment tools for certain types of program participants, including for States and Insular Areas, and for PHAs not submitting an AFH in a joint or regional collaboration with a local government

The AFFH Final Rule

On July 16, 2015, at 80 FR 42272, HUD published the AFFH final rule. The AFFH final rule provides, at § 5.160, for staggered submission deadlines for program participants, an aspect of the final rule for which HUD first solicited public comment on January 15, 2015. The final rule provides that each category of program participants listed in § 5.160 their first AFH shall be submitted no later than 270 days prior to the start of (1) their program year or fiscal year for which a new consolidated plan is due, or for which, in the case of PHAs, except qualified PHAs, a new 5-year plan is due. The action that commences the count of 270 days is issuance of an approved Final Assessment Tool for the specific category of program participants. The final rule also provides that if the first AFH submission date results in a preparation period for the AFH that is less than 9 months after the date of publication of the Assessment Tool that is applicable to the program participant or the lead entity if the submission is to be a regional AFH, then the submission deadline will be extended to a date that is not less than 9 months from the date of publication of the applicable Assessment Tool.

³ Section 2702 of title II of the Housing and Economic Recovery Act (HERA) defined “qualified PHAs” as PHAs that have fewer than 550 units, including public housing and section 8 vouchers.

Under the AFFH final rule, program participants that received less than a \$500,000 CDBG grant in Fiscal Year (FY) 2015 and qualified PHAs, as such term is defined in the rule, will have additional time to conduct and submit their first AFH.

The 30-day Notice on the Revised Assessment Tool

On July 16, 2015, at 80 FR 42108, HUD published, in accordance with the PRA, its notice soliciting public comment for a period of 30 days, on a revised Assessment Tool (Revised Assessment Tool) in response to comments submitted on the 60-day notice. The July 2015 notice responded to significant issues public commenters on HUD's 60-day notice raised and requested comments on specific questions, at 80 FR 42116 and 42117. The changes that HUD made to the Revised Assessment Tool in response to comments received on the 60-day notice are described in the July 16, 2015, notice, at 80 FR 42111 through 42114.

By the close of the comment period on August 17, 2015, HUD received 40 public comments. All public comments received in response to the 30-day notice can be found at:

<http://www.regulations.gov/#!docketBrowser;rpp=25;so=ASC;sb=docId;po=0;dct=PS;D=HUD-2015-0063>.

Solicitation of Comment on Specific Questions. Many of the commenters directly responded to questions on which HUD specifically solicited comment, and these questions were as follows.

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. The accuracy of the agency's estimate of the burden of the proposed collection of information;
3. Ways to enhance the quality, utility, and clarity of the information to be collected;
4. Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses;
5. Whether Option A or Option B of the Revised Assessment Tool would be the most effective and efficient way of conducting the analysis with respect to the selection of contributing factors.⁴ If one option is preferred over the other, please state the reasons for the preference;
6. While the Revised Assessment Tool was designed to set minimum AFH requirements as well as providing a straightforward process for HUD to review the AFH, how might program participants use the template to conduct broader collaborations including more comprehensive cross-sector collaborations? How could the Revised Assessment Tool provide greater flexibility for participants to collaborate and expand upon the framework HUD has set in the Revised Assessment Tool? How could the Revised Assessment Tool allow program participants to incorporate better or additional data, alternative mapping tools, or other data presentations; and
7. Whether additional changes to the Revised Assessment Tool would better

⁴ As discussed in the following section of this preamble, HUD submitted for public comment, two formats on how to structure the Assessment Tool.

facilitate regional collaboration among program participants.

Response to the 30-Day Notice - Overview. Many of the commenters expressed support for the Revised Assessment Tool, stating that HUD adopted several of the changes recommended by the commenters in response to the 60-day notice. Revisions to the Assessment Tool for which commenters expressed appreciation included: the listing of local knowledge received from the community participation process and reasons for not using certain local knowledge obtained; inclusion of language regarding “displacement of residents due to economic pressures”; the inclusion of “school enrollment policies” and their impact on students’ abilities to attend proficient schools; increased discussion of language barriers and identification of limited English proficiency (LEP) populations; and descriptions of contributing factors and the detailed instructions for how to complete the template section-by-section.

Other commenters, however, stated that the Revised Assessment Tool reflected that HUD did not consider important changes recommended by the commenters, that the analysis was still highly burdensome, was largely incomprehensible, and showed little understanding of the dynamics of successful housing integration, and some commenters requested that HUD withdraw the Assessment Tool and commence the PRA process anew with a new version.

For those commenters recommending changes and identifying areas in need of improvement, the majority of commenters focused on the following: (1) that, in their view, the Assessment Tool does not account for the resource limitations of program participants and actions that program participants can reasonably take; (2) the data HUD is providing and the Data Tool; (3) the contributing factors—both with respect to the lists

included and specific revisions to the explanations provided in Appendix C; (4) the process for setting goals; and (5) how HUD will evaluate submitted AFHs.

With respect to the two formats for structuring the Assessment Tool, Option A and Option B, offered in the 30-day notice, commenters expressed their preference for Option B, but those expressing preference for Option B recommended revisions that they thought would improve the utility of Option B. Overall, commenters on the 30-day notice provided detailed suggestions on how they believed the Assessment Tool could be structured to reduce burden, provide greater clarity, and improve the fair housing assessment process. Other commenters stated that, regardless of format, this Assessment Tool was not appropriate for certain program participants, such as States.

Certain commenters submitted comments on the AFFH rule, raising comments previously submitted and addressed by HUD in the rulemaking process, such as HUD has no authority to issue this rule, the rule is an unfunded mandate, HUD lacks the capacity to administer this rule, and HUD needs to establish safe harbors. Since the rulemaking process has been completed and the 30-day notice (and the 60-day notice) sought comment on the Assessment Tool, HUD is not responding to these comments in this notice.

Development of Assessment Tools for Specific Program Participants

HUD will be issuing separate Assessment Tools for States and Insular Areas, and for PHAs that are not submitting an AFH as part of a joint submission or regional collaboration. While HUD will take into consideration the issues raised by commenters about States in developing the State Assessment Tool, HUD will not respond to those comments in this notice. The State and Insular Areas Assessment Tool, and the PHA

Assessment Tool, will all undergo the full PRA process that provides the public with two opportunities for comment.

HUD is also considering how burden may be reduced for small entities and qualified PHAs. HUD will soon be publishing a notice that seeks advance comment on how the Assessment Tool can best be used by small entities without jeopardizing the ability to undertake a meaningful assessment of fair housing.

HUD appreciates all comments on the Assessment Tool received in response to the 30-day notice, and, in developing this final version of the Assessment Tool all comments were carefully considered. The significant issues commenters raised and HUD's responses to these issues are addressed in Section II.B. of this notice.

Additionally, HUD has posted on its website at

http://www.huduser.gov/portal/affht_pt.html and

<https://www.hudexchange.info/programs/affh/>, a comparison of the Final Assessment Tool compared to the Option B version of the Revised Assessment Tool (Compare Assessment Tool) so that program participants and the public can see all changes made.

II. The Final Assessment Tool

A. Highlights of the Final Assessment Tool.

This section highlights the key features of the final Assessment Tool, and those that differ from the Revised Assessment Tool.

Format of Final Assessment Tool. This final Assessment Tool is based on the "Option B" format presented in the 30-day notice. As provided in the 30-day notice, the two formats did not differ in content or analysis, but differed with respect to where the analysis of contributing factors was placed. For the commenters who responded to

HUD's question as to which format was preferred, the majority favored Option B, but offered suggestions on how Option B could be improved.

Content of the Assessment – Highlight of Changes to Option B. The Final Assessment Tool now contains additional questions in the Community Participation Process section; asks questions on homeownership in certain sections; clarifies questions commenters advised were unclear; augments the Fair Housing Enforcement, Outreach Capacity, and Resources section; provides direction to program participants on questions where they may describe relevant ongoing activities relating to, among other things, housing preservation, community revitalization, and mobility; clarifies instructions on how to identifying and prioritizing contributing factors and setting goals; includes additional information in the descriptions of certain contributing factors, located in Appendix C; and provides additional examples of possible sources of information program participants may use, in addition to the HUD-provided data, in completing the assessment.

B. Public Comments Received in Response to the 30-Day Notice and HUD's Responses

This section provides a summary of the most significant issues raised by commenters and HUD's responses.

Issues on Overall View of the Assessment Tool

Issue: The Assessment Tool has little utility. Several comments stated that the Assessment Tool is unreasonably detailed such that it is a technocratic study of the conditions at play in a program participant's jurisdiction and region. Commenters stated that many of these conditions lay outside the control of the program participant and

therefore the Assessment Tool is nothing more than an academic exercise with little ability to advance the goals of the Fair Housing Act. Commenters stated that the Assessment Tool does not align the required analysis with the programmatic tools available to each program participant, or account for resource limitations with respect to the setting of goals that can be realistically achieved. In terms of resource limitations, commenters raised concerns about both: (1) the resources available to program participants, including but not limited to small entities, to conduct and complete the assessment itself; and (2) whether the Assessment Tool and HUD's review and acceptance or non-acceptance of the AFH adequately recognize resource limitations of program participants in setting and achieving goals and their ability to influence any contributing factors as having a significant impact. Other commenters stated that because program participants do not have control or are unable to directly influence issues relating to disparities in access to opportunity the analysis will have no utility. Certain commenters stated that the collection of information will have more relevance and value for larger program participants that administer a wide range of housing and community development activities, but not for smaller program participants. For smaller program participants, they stated that the information collection will be a significant burden with little value added.

HUD Response: HUD believes that the Assessment Tool will be helpful and will have utility for program participants in assessing fair housing issues, identifying contributing factors, formulating realistic goals, and ultimately meeting their obligation to affirmatively further fair housing. One of the primary purposes of the Assessment Tool is to consider a wide range of policies, practices, and activities underway in a program

participant's jurisdiction and region and to consider how its policies, practices, or activities may facilitate or present barriers to fair housing choice and access to opportunity, and to further consider actions that a program participant may take to overcome such barriers.

In terms of resource limitations, HUD reiterates here what HUD has stated previously, and that is that HUD is aware that program participants may be limited in the actions that they can take to overcome barriers to fair housing choice and that the AFH process does not mandate specific outcomes. However, that does not mean that no actions can be taken, or that program participants should not strive to overcome barriers to fair housing choice or disparities in access to opportunity. With respect to small program participants, HUD continues to consider ways to better enable small entities in complying with their obligation to affirmatively further fair housing while recognizing their resource limitations. In this regard and, as further discussed below, HUD will be issuing an advance notice for comment on how the Assessment Tool can best be used by small entities while providing for meaningful assessment of fair housing issues, contributing factors, and goal setting. As HUD explained in the preamble to the final rule, "HUD recognizes that smaller program participants do not have the same capacity as larger participants and therefore burdens can be greater. HUD has strived in this final rule to reduce costs and burden involved in implementation of the new AFH as much as possible, especially for smaller program participants. The guidance that HUD intends to provide will further refine the application of the rule's requirements to specific types of program participants, especially smaller PHAs and local government agencies with limited staff and resources."

Issue: Ways to enhance the utility of the Assessment Tool. Commenters suggested ways that would enhance the utility of the Assessment Tool. These suggestions included the following: when using tables to compare groups, provide guidance on what HUD considers significant differences; acknowledge that while historical data has significance, if more recent data is not provided to program participants, the data will have limited relevance for the fair housing assessment; and provide technical assistance through national capacity builders.

HUD Response: HUD appreciates these suggestions, and has incorporated some examples in the Guidebook. With respect to the data contained in the maps and tables, HUD has strived, and will continue to strive, to make these more user friendly, and, as new data becomes available or updated, HUD will make that data available to program participants.

Issue: Ways to reduce burden. Several commenters stated that the completion of the Assessment Tool will require tremendous expenditure of time and resources on the part of program participants, and that HUD underestimated the time and resources that would be needed to complete the Assessment Tool. Commenters offered suggestions on ways that burden could be reduced. These suggestions included the following: HUD providing for batch exports of maps and data tables, rather than exporting only one map or table at a time; allowing for electronic submission of AFHs; HUD providing Home Mortgage Disclosure Act (HMDA) data at the census tract level; allowing program participants to identify actions they can realistically take and then prioritize those actions based on potential impacts; HUD should not only reference that data is available at the census tract level but should identify the census tracts to allow larger program

participants to match them against community areas within an urban county; and having tables show data at both the city-wide and census tract level. Commenters suggested that HUD should identify where there is an absence of valid, appropriate data to reduce any time that may be spent searching for such data. Finally, commenters suggested that HUD allow each collaborating participant in a joint or regional AFH to conduct their own, separate local analysis.

HUD Response: HUD appreciates the comments regarding improved functionality for the HUD-provided data and HUD is taking all comments into account in its continuing design and improvements of the online tools that will be made available to program participants. These online tools include the Data Tool (which will also be publicly available) that contains the maps and tables, as well as the online web-based portal (“user interface”) that HUD is creating to allow program participants to conduct and submit their AFHs while incorporating the tables and maps from the Data Tool.

While HMDA data is currently available from public sources, HUD did not require its use at this time. HUD is continuing to work to provide for batch exports of maps and data tables. With respect to identifying where there is an absence of data, the Final Assessment Tool identifies where local data and knowledge may be particularly helpful. Community participation is also expected to provide supplemental local data.

With respect to program participants setting goals that they can realistically be expected to achieve, as noted in response to an earlier comment, although program participants are required to affirmatively further fair housing, HUD has repeatedly stated that the AFH process does not dictate specific actions, goals, or outcomes, which will depend on local fair housing issues, contributing factors, and the program participants’

designation of goals to address them. The AFH process provides basic parameters to help guide program participants in their public sector housing and community development planning and investment decisions by being better informed about fair housing concerns.

With respect to the comment that collaborating participants should be allowed to conduct their own separate local analysis, the AFFH final regulations state that while program participants may divide work as they choose, all collaborating program participants are accountable for the analysis and any joint goals and priorities to be included in the collaborative AFH, and they are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

Issue: Ways to enhance community participation. Several commenters offered suggestions on how community participation could be enhanced. These suggestions included: HUD providing lists of organizations that program participants may wish to consult, such as transportation advocacy groups, transportation planners, public health advocates, and community based organizations; requiring program participants to engage in partnerships with fair housing and other civil rights organizations; requiring program participants to identify and consult with any subrecipient of HUD funds to which program participants or others provide HUD funding, along with any other partners, that will provide for a more collaborative effort in achieving fair housing goals.

HUD Response: The community participation requirements for the AFH process are largely based on the existing citizen participation requirements in HUD's Consolidated Plan regulations in 24 CFR part 91 and the comparable requirements in HUD's Public Housing regulations in 24 CFR part 903. It was HUD's view at the time

of development of the AFFH rule that these requirements, longstanding and familiar to consolidated plan participants and PHAs were appropriate for the AFH, and this continues to be HUD's view. However, these are the minimum requirements, and program participants are always permitted and in fact encouraged to exceed the minimum requirements. Through the Guidebook, HUD offers ways in which community participation may be enhanced. In response to public comment, the Final Assessment Tool, however, does include additional questions in the Community Participation Process section included to help program participants better evaluate the success of the community participation process they undertook.

Issue: Ways to enhance joint and regional collaboration. Commenters commended HUD for encouraging program participants to collaborate by allowing program participants to align their program years. Commenters offered the following suggestions to further promote regional collaboration: HUD should offer deadline extensions or offer other incentives that would encourage program participants to continue collaboration in succeeding AFH submission years; establishing an optional regional section of the template to facilitate jurisdictions and PHAs collaborating and informing each of their analyses; encouraging a consortium structure, which a commenter stated could help establish equity advocates and disadvantaged communities' leaders' decisionmaking roles, contribute to meaningful understanding of regional housing markets and patterns of segregation and isolation of opportunity, and enhance the ability to address these issues; allowing collaborating jurisdictions to decide about what types of data are available and most relevant; and promoting advisory councils with cross-sector representatives to help overcome any lack of local political interest or will in

collaborating.

HUD Response: HUD appreciates these suggestions on how to promote joint and regional collaboration. Many of the steps suggested by commenters are beyond the scope of this Assessment Tool and would require additional regulatory and programmatic changes. HUD will continue to consider the options available to it with respect to promoting these sorts of collaborations. While the Final Assessment Tool does not incorporate these suggestions, HUD will give consideration to these recommendations for future changes to the Assessment Tool. Several of the suggestions may also be addressed not in this Assessment Tool, but in the Guidebook and additional guidance documents.

HUD encourages both regional and joint submissions of AFHs. Both types of submissions have the potential to greatly increase the positive impact of fair housing planning as well as potentially reducing the burden of completing the AFH for many entities. All program participants are encouraged to consider options for either a joint or regional submission. In such consideration, program participants should consult the AFFH final rule for all requirements on joint or regional collaboration, including submission deadlines.

Issue: Format of the Assessment Tool. Some commenters stated that the two options presented differences without distinctions. Most commenters stated that Option B was preferable because it presents a list of contributing factors after the analysis of each fair housing issue and it was more straightforward. The commenters stated that since the nature of contributing factors can vary depending on the type of fair housing issue, a list of factors tailored to a given issue would elicit more complete and appropriate responses. However, other commenters stated that Option A is preferable because the

contributing factors are more specifically outlined, and they thought Option B was less clear for program participants than Option A. Other commenters suggested that both Options A and B have strengths, but that HUD should allow program participants to decide which option best suits their needs.

HUD Response: As noted earlier, the Final Assessment Tool is based on Option B. HUD appreciates those commenters who responded to HUD's request for comment on the structure of the Assessment Tool. Neither of the formats was unanimously endorsed by commenters as a format that should be adopted without change, and HUD has made several changes to the Option B format in response to public comment. At this time, HUD cannot offer program participants the ongoing option to choose which format works best for them but will evaluate whether it is feasible to do so at some future time. HUD notes that program participants, however, may complete the Final Assessment Tool in any order they choose, which may provide some additional flexibility or avoid unnecessary duplication of effort, so long as all elements of the AFH are completed. For example, program participants may choose to complete all questions in the template and then identify significant contributing factors.

The Final Assessment Tool still retains the streamlined consideration of contributing factors that was adopted following the first round of public comments. As stated in HUD's 30-day notice on the Revised Assessment Tool, "The Initial Assessment Tool would have required contributing factors to be identified twice, once separately and again in answering specific questions. The Revised Assessment Tool only requires that contributing factors be identified once. The contributing factors analysis has also been revised by removing the previous requirements to list all contributing factors and then

rate their degree of significance. In the Revised Assessment Tool, program participants are required to identify those contributing factors that significantly impact specific fair housing issues, and for the purposes of setting goals prioritize them, giving the highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact compliance with fair housing or civil rights law.” In addition, the Guidebook provides guidance to assist program participants in identifying and prioritizing contributing factors.

Issue: Preservation of Affordable Housing. A number of commenters requested clarification of the continuing importance of affordable housing preservation and rehabilitation and how these vital program activities can be addressed in different parts of the Assessment Tool.

A commenter requested that specific housing preservation strategies should be included in the analysis questions and/or instructions, and suggested mentioning strategies such as, “preventing Project-based Section 8 contract opt outs, providing rehab assistance for existing subsidized projects, and recapitalizing and extending affordability for projects with maturing mortgages or expiring use restrictions.”

One commenter stated the explanation of the potential contributing factor on Lack of Community Revitalization should have explicitly mentioned housing preservation as, “an important tool within comprehensive community revitalization strategies and should be included.”

One specific suggestion made by commenters was to clarify the description of the contributing factor on “Siting selection policies” to remove the reference to housing rehabilitation in two places in the description, including in the sentence, “[t]he term

‘siting selection’ refers here to the placement of new or rehabilitated publicly supported housing developments.”

A commenter requested that questions should be added to the analysis, “asking jurisdictions to identify affordable housing developments in areas of opportunity that are threatened with loss.”

HUD Response. HUD appreciates these comments and made a number of clarifications to the Final Assessment Tool to respond to the concerns within the overall fair housing planning context of the AFH.

First, the additional information questions in the analysis section of the Assessment Tool were clarified to indicate that they provide an opportunity for program participants to include information on the role of affordable housing as it relates to the analysis of the fair housing issues in each relevant section.

Regarding the comment suggesting the list of specific preservation activities, HUD has clarified in the instructions to the additional information questions that housing preservation activities that are related to fair housing issues may be discussed there. Also a change was made to the contributing factor on “displacement due to economic pressures” to clarify that economic pressures can include the loss of affordability restrictions, which can include items mentioned in the commenter’s list.

Regarding the comment on the description of the Lack of Community Revitalization contributing factor, HUD amended the contributing factor description to include, “When a community is being revitalized, the preservation of affordable housing units can be a strategy to promote integration.” Moreover, fair housing considerations relating to housing preservation are also already covered in a number of other

contributing factors, including displacement of persons due to economic pressures; and location and type of affordable housing. In addition, throughout the Assessment Tool, program participants also must identify “other” contributing factors that are not included in the HUD provided list.

The “Siting selection policies” contributing factor was clarified by deleting two references to rehabilitated housing where they originally appeared and adding this more precise description: “Placement of new housing refers to new construction or acquisition with rehabilitation of previously unsubsidized housing. State and local policies, practices, and decisions can significantly affect the location of new publicly supported housing.” This change was made to distinguish between rehabilitation activities relating to the preservation of subsidized housing and the siting of new subsidized housing that sometimes can involve acquisition of a previously unsubsidized building. Fair housing issues relating to the location of existing publicly supported housing would be addressed under the Location and Type of Publicly Supported Housing contributing factor. HUD notes that program participants still have the ability to consider other relevant factors when comparing the very different program activities of new construction and rehabilitation, such cost-effectiveness and trends in the overall market availability of units affordable to those with the lowest incomes.

HUD declined to adopt the commenters’ suggestion that new questions be added to the analysis to identify specific affordable housing developments at risk of loss or conversion because HUD believes that the Assessment Tool provides adequate opportunities to discuss such concerns in several sections of the analysis and through the contributing factors analysis. HUD did respond, however, by amending the contributing

factor, “displacement of residents due to economic pressures” to clarify that it can be applied to individual buildings at risk of loss of affordability as well as to neighborhoods undergoing rapid economic change and where preservation may be an appropriate fair housing related goal.

There were additional clarifications that were made in response to the general concerns raised, as reflected in the Compare Assessment Tool.

Issue: Loss of Affordable Housing. One commenter requested that the contributing factors identified in the Tool for the “Fair Housing Issues Analysis” section should explicitly acknowledge that the loss of affordable housing—whether it be in the form of the failure to preserve existing affordable housing, or the failure to produce more affordable housing units—impacts fair housing choice for many families.

HUD Response. HUD declined to add the new suggested contributing factor, but did clarify the instructions to the Demographics section by adding the following language: “Program participants may also describe trends in the availability of affordable housing in the jurisdiction and region for that time period.” HUD also believes that the “Additional Information” question in the Disproportionate Housing Needs section would be an appropriate place to include such local data and local knowledge and, for purposes of assessing fair housing concerns, any resulting disparities that may be experienced by certain protected class groups. In addition, HUD amended the language on the potential contributing factor, “Displacement of Residents Due to Economic Pressures” to clarify this factor can include the loss of affordability restrictions at individual buildings as well as in particular geographic areas.

Issue: Community Assets, Organizations and Characteristics. Commenters

requested that questions be included in the Assessment Tool to allow program participants to include information beyond the HUD-provided data related to a wide variety of local and regional issues, assets and socio-economic conditions and trends. Many commenters provided often extensive lists of specific issues that HUD should include or call out for analysis or contributing factors sections or in the instructions. The comments covered a wide variety of issues, assets, organizations, strategies and activities related to their region, jurisdiction and neighborhoods. For example, one commenter requested questions on, “responsive community-based organizations, community development corporations that have worked for years to help revitalize the neighborhood, active tenant organizations, and other important social network and cultural support infrastructures.”

Several commenters also requested a question or other space to provide information on immigrant communities including, “cultural and religious organizations and social networks in local neighborhoods and communities.”

HUD Response. In reviewing commenters’ suggestions, HUD was mindful of the information collection burden that would be involved in adding mandatory questions on a wide variety of issues that may be relevant in some jurisdictions and regions but not in others. For this reason, HUD declined to adopt the suggested addition of new questions in the analysis section. HUD has clarified the “additional information” questions in each section of the analysis to provide program participants the opportunity to supplement with information they determine relevant to an assessment of fair housing in their jurisdiction and region. These questions provide a space for discussion of issues that are relevant to the assessment of fair housing issues without creating additional mandatory

questions.

While HUD declined to add specific questions or instructions on immigrant communities and their various characteristics, program participants may address fair housing issues relating to immigrant communities in several sections of the Assessment Tool, including the additional information questions as well as the descriptive narrative and analysis in the Demographics section. HUD is familiar with the research on immigrant communities and recognizes that there are complex issues associated with them, as noted in the preamble to the AFFH final rule (see 80 FR. 42279-42280).

Issue: Colonias. One commenter recommended that issues related to the Colonias be added to the contributing factor on “access to financial services” by adding a reference to “contract for sale” arrangements.

HUD Response. HUD declined to make this revision because such financing mechanisms can already be considered under the contributing factor, “access to financial services” and the new contributing factor on lending discrimination. Fair housing concerns related to Colonias can also be considered under the “other” category which allows program participants to add contributing factors not identified on the HUD-provided list.

Issue: The Data Tool has promise but needs adjustment. Several commenters commended the Data Tool, advising that it has the potential to provide data that could not be previously accessed, and that it provides important opportunity metrics. Commenters however, requested improvements to the Data Tool in ways they stated would be more useful. Commenters requested that HUD enlarge the contrast and size of the dots because as currently presented, the contrast and size of dots is not large enough to allow

for differentiation between the dots, and that some dots appear to be located where no one lives. Commenters also requested that the Data Tool provide information to communities where multiple program participants choose to collaborate, stating that the current Data Tool does not have this functionality and it is not possible for program participants to generate maps and tables for each of the entities that are collaborating and combine them without getting inaccurate results. Another commenter added that if the data, information, and analysis of various program participants in the region were shared with others, collaboration could be better facilitated. Another commenter stated that it was unable to generate or download tables over a two-week period, and therefore was unable to assess them. Commenters stated that it is not clear from the Data Tool whether the lack of identified racially and ethnically concentrated areas of poverty (R/ECAPs) in non-metropolitan communities is an artifact of the tool or whether these communities really do not include R/ECAPs. A commenter stated that the Data Tool identifies far fewer R/ECAPs due to the 40 percent threshold set. Another commenter stated that certain data elements in the Data Tool are incompatible with the Fair Housing Act, specifically with respect to foreign-born populations. The commenter stated that the foreign-born data from the census questionnaire does not track exactly with the definition of national origin under the Fair Housing Act.

Additional suggestions on how the Data Tool could be improved included the following: make the User Guide for the Data Tool easier to find without having to click through several screens before finding it; make both maps and tables exportable; divide the User Guide into two parts, one on maps and one on tables, and better define the terminology used in the Data Tool; add shape files (a data format for geographic

information) for R/ECAPs that are available for download as well as different color options for shading census tracts to improve the readability of the maps; clarify that dot density maps defining R/ECAPs does provide a complete picture of segregation; better address family cluster indicators because they are not precisely geocoded, which may misrepresent the location of families away from community assets and away from opportunities and closer to hazards; if HUD is using sophisticated mapping software there is no reason why the maps provided by HUD cannot contain more layers, more symbols and more contrasting colors; clarify whether the data on the maps represents the distribution of publicly supported housing units within a census tract based on actual unit counts in the buildings located within the tract or if the count assumes that all units in a project are in a single building; include an “identify” tool that can provide existing information on the population in assisted developments; and allow program participants to overlay their own maps and data.

HUD Response: HUD appreciates the detailed comments received about the Data Tool. HUD continues to make adjustments, refinements, and improvements to the Data Tool, many of which will address the concerns raised by commenters regarding its utility and functionality. HUD hopes to be able to provide the public with raw data, which may be used by program participants in their analyses, so long as any manipulated data is submitted along with the AFH submitted to HUD for review. HUD has also added an instruction in the Final Assessment Tool to address the concern about the location of publicly supported housing units, since HUD allows PHAs to group buildings under asset management projects (AMPs), which results in a single project displayed on a the map for a given asset management project.

Issue: Application of HUD-provided data to jurisdictions. Many commenters expressed concern that various individual components of the HUD-provided data, including indices, R/ECAP measures, and maps were not always useful or applicable to their jurisdiction's own characteristics or demographic composition. For instance, some commenters noted that R/ECAPs were not always applicable to their local demographics (e.g., majority-minority cities).

HUD Response. The HUD-provided data are intentionally based on nationally available uniform data sources. The indices and measures adopted by HUD are intended to provide a baseline to facilitate the analysis for the jurisdiction and region. Program participants are required to use additional local data and local knowledge to provide a more complete fair housing analysis. This may include consideration of additional data sources, alternate measures, and qualitative analysis. As stated in the preamble to the AFFH final rule, "HUD has worked to identify a comprehensive set of data that allows a multisector assessment. Moreover, because research on measuring access to community assets is continually evolving, HUD is committed to reviewing the data on an ongoing basis for potential improvements. As with all data metrics, the measures in each category have strengths as well as limitations, and no criteria should be assessed in isolation from the other measures or required assessments." The preamble addressed other known strengths and limitations of specific components of the HUD-provided data, as well as provided a discussion of their applicability to individual program participant's unique local conditions.

Issue: The indices in the Data Tool are unwieldy, difficult to understand, and several are not well-conceived. Commenters stated that the use of complex social science

indices is largely unintelligible to most users and the general public. Another commenter stated that the use of opportunity indices may be related either directly or indirectly, and the meaning of differences between them may be unclear to program participants. A commenter stated that the data should be able to be used by the broadest possible audience, but in its current form it is too cryptic and too oriented toward the use of technical terms rather than plain language. A commenter stated that the dissimilarity index has several shortfalls and it should either be removed all together or HUD should explain its weaknesses in detail. Another commenter made a similar suggestion, stating that HUD needs to clarify how the dissimilarity index is being calculated to clarify for jurisdictions and how to interpret it for program participants that lack the knowledge or expertise to analyze the dissimilarity index. A commenter stated that instead of providing the various opportunity indices, HUD should require collection and analysis of data with respect to these issues. In contrast to these commenters, other commenters suggested that HUD provide the “exposure index” and the “race and income index” in addition to the “dissimilarity index.”

Other commenters offered recommendations on specific indices. Commenters offered the following comments: with respect to the Poverty Index, instead of using a poverty rate, HUD should construct a poverty index that is the average of the family poverty rate and the percentage of households receiving public assistance; the Neighborhood School Proficiency Index captures the percentage of elementary school students who pass state tests in math and reading in the schools in a given neighborhood, but the commenters stated that this is measure of school quality, and there is no attempt to measure value added or even quality-adjust schools based upon the characteristics of

its students; the Job Access Model measures the distance to job centers but does not make much of an attempt to match jobs to the skills of workers; explain the advantage of aggregating the factors considered by the labor market engagement index and the poverty index – that it would seem more practical to report the difference between the census tract and the national or regional rate and conduct a test for statistical significance.

HUD Response: HUD appreciates the suggestions made by commenters, as with the comments on enhancing the availability of data, HUD has strived and will continue to strive to have the indices provide greater aid in the assessment of disparities. The HUD-provided indices of common indicators of opportunity – poverty, education, employment, transportation, and environmental health – were selected because existing research suggests that from a fair housing perspective, they have a bearing on a range of important outcomes. As with all of the HUD-provided data, these indices are based on nationally available data sources and one or more may have limited application for some jurisdictions, and may not include all protected classes required for analysis under the Fair Housing Act. As noted above in response to an earlier comment, HUD hopes to be able to provide the raw data from the Data Tool to the public. Regarding the comments on use of the “exposure index” and the “race and income index,” HUD notes that it is providing the dissimilarity index in conjunction with dot density maps that, taken together, can often present a fuller picture of the levels and patterns of segregation and integration in the jurisdiction and region. However, use of outside, additional measures is by no means prohibited in the Final Assessment Tool and program participants may use these additional measures of segregation as well as information obtained from the community participation process.

Issue: Concern with HUD's ability to implement web-based information collections. Commenters expressed concerns about HUD's ability to implement web-based information collections. The commenters stated that in the past HUD has often failed to keep existing systems and information up-to-date. Commenters stated that the concern is enhanced here because of the complexity of the Assessment Tool.

HUD Response: HUD appreciates these concerns, and takes them seriously. Many commenters also provided specific and helpful feedback on functionality, that HUD aims to incorporate into the user interface that HUD is developing. HUD has administered web-based systems for many years and anticipates the Assessment Tool and associated web-based applications, such as the Data Tool and Assessment Tool Interface, will assist program participants in completing AFHs. HUD is taking appropriate measure so that the systems function properly.

Issue: Enhance the ability to access Low-Income Housing Tax Credit (LIHTC) data. Commenters commended HUD for including LIHTC properties in the Assessment Tool, stating that the inclusion of these properties is important to a meaningful assessment of fair housing. While commenters appreciated the inclusion of LIHTC data, several recommended that HUD develop a plan to collect LIHTC data in a uniform way from State housing finance agencies, or in the alternative, HUD should acknowledge that the variation in State data may affect program participants' abilities to complete the AFH. Another commenter expressed concern that HUD does not have zip codes for 16 percent of the LIHTC inventory and that obtaining this information and making it available should be a straightforward process for HUD. Another commenter recommended inclusion of a table that identifies the numbers of units or any other characteristics of

LIHTC developments since LIHTC is responsible for the majority of assisted housing in the nation. Commenter notes that the tables do not include the address or census tract of each publicly supported and LIHTC property.

HUD Response: HUD acknowledges the limited availability of LIHTC data on tenant characteristics at the development level. HUD is continuing its efforts to collect and report on this data. However, commenters should also be aware that information at the development-level will often not be available due to federal privacy requirements and the small project sizes in a large portion of the LIHTC inventory.

HUD will include census tract information in the HUD-provided data through the online AFFH Data and Mapping Tool. The Data and Mapping Tool will include a query tool that will allow users to filter and sort demographic data for both developments and census tracts by common characteristics for public housing, project-based Section 8, and Other HUD Multifamily housing (including Section 202 and Section 811). The query tool will include census tract demographic characteristics for LIHTC developments. The Data and Mapping Tool will also allow users to export tables showing this data from the query tool or the resulting comparisons from a query. These changes are intended to reduce grantee burden, improve the accuracy of analyses and reduce the risk of incorrect results (for example from drawing incorrect correlations from potentially complex data), as well as to better inform the community participation process.

Issue: Clarify use of local data and local knowledge and efforts to obtain such information. Commenters stated that the Assessment Tool should provide examples of local knowledge such as: efforts to preserve publicly-supported housing; community-based revitalization efforts; public housing Section 8 demolition or disposition

application proposals; Rental Assistance Demonstration (RAD) conversion applications; transit-oriented development plans; major redevelopment plans; comprehensive planning or zoning updates; source of income ordinance campaigns; and inclusive housing provision campaigns. Other commenters requested that HUD include examples of available local data, such as neighborhood crime statistics; school demographic and school performance data, State and local health department data by neighborhood; lead paint hot spots; data about the institutionalization of persons with disabilities and the availability of community-based services from state and local Medicaid agencies and disability services departments; and reports and studies already completed by state and local research and advocacy groups.

Other commenters suggested that HUD require program participants to describe their efforts to identify supplemental data and local knowledge such as from universities, advocacy organizations, service providers, planning bodies, transportation departments, school districts, healthcare departments, employment services, unions, and business organizations. Other commenters went further, suggesting that HUD require program participants to conduct research for topics on which HUD is not providing data. Another commenter stated that local data should not be subject to a determination of statistical validity because such data is generally combined with local knowledge, which is not always statistical. Other commenters asked that HUD encourage all local data be made publicly available on websites prior to the community participation process, and that HUD-provided data must be publicly available as well. Another commenter requested that the Assessment Tool include a separate section on local knowledge or provide for local knowledge to be included in each question for each section in the Assessment.

HUD Response: HUD notes that the HUD-provided data will be made publicly available. HUD anticipates that in some cases the data and mapping tool will allow program participants to set thresholds when using the data, for instance by adjusting the display of some mapping features to better reflect their local demographics. Since thresholds may have a significant effect on the analysis conducted, any thresholds set by program participants in using these data must be disclosed in the AFH made public during the community participation process and in the AFH submitted to HUD.

While HUD has not adopted the commenter's suggestion to establish a separate section on local knowledge, HUD has added to the instructions many additional references to local knowledge and local data, to identify where HUD believes such knowledge and data would be particularly helpful in responding to questions. HUD believes these additional references provide the clarity that commenters sought. Additionally, HUD expects that local data and local knowledge will often be made available to program participants through the community participation process, and HUD will further address local data and local knowledge in the Guidebook to provide additional examples of local data and local knowledge and where such sources can be accessed.

HUD declines to impose additional requirements on program participants to searching for local data and to require program participants to describe their efforts to identify supplemental local data and local knowledge. HUD requires program participants to supplement HUD-provided data with local data and local knowledge because HUD acknowledges that it is not able to provide data on all areas relevant to a fair housing assessment from nationally uniform sources, and local data may be able to

fill such gaps. For example, program participants may find valuable data through a variety of sources, including from other federal and state agencies websites. Some examples of federal online data sources include: the Department of Treasury's Community Development Financial Institution's Information Mapping System (<https://www.cdfifund.gov/Pages/mapping-system.aspx>), the EPA's Environmental Justice Screening and Mapping Tool (<http://www2.epa.gov/ejscreen>), the General Services Administration's Data.Gov website, and HUD's own resources (e.g. <https://www.huduser.gov/portal/datasets/gis.html>). Additionally, local data may be the more recent and relevant data to rely on compared to the HUD-provided data. However, HUD has repeatedly said that local data and local knowledge constitute information which can be found, through a reasonable amount of searching, are readily available at little or no cost, and are necessary for the completion of the AFH.

With respect to the requirement that local data is subject to a determination of statistical validity, HUD notes that this is a requirement of the Final Rule itself, but as stated in the Preamble to the Final Rule this provision is intended to, “clarify that HUD may decline to accept local data that HUD has determined is not valid [and not] that HUD will apply a rigorous statistical validity test for all local data.”

Issue: HUD needs to provide certain data. Commenters offered suggestions on data that HUD should provide. These suggestions included the following: data on voucher holders; project-level data for each separate housing program for each jurisdiction and region, or at least provide guidance on how program participants may collect project-level data; cross-tabulated data on disability, race, and poverty; 2008-2012 American Community Survey data (5-year data); data on persons with disabilities living

in segregated settings; data on local crime; ratings from the Community Development Financial Institution distress index; data on access to broadband infrastructure; and data for all categories of publicly supported housing, including those outside the control of PHAs. With respect to the last suggestion, commenters stated that if HUD cannot provide such data, PHAs should not be required to address this area. Commenters asked that HUD not provide any data that is not statistically significant or geographically appropriate. Commenters also stated that HUD establish a process for program participants to identify data discrepancies or missing data and hold program participants harmless from not using resources that are inconsistent for the covered entity's first round of submitting an AFH.

HUD Response: HUD appreciates the suggestions made by commenters. HUD has strived and will continue to strive to provide program participants with as much nationally uniform data as possible. HUD anticipates that it will be able to add to the data that it makes available over the years. With respect to areas where HUD has not provided data, as HUD stated in response to the preceding comment, program participants must use relevant local data that they can find through a reasonable amount of search, are available at little or no cost, and are necessary for the completion of the Assessment Tool. If such local data cannot be found, then local knowledge gained through the community participation process may be helpful in this regard. HUD staff in the applicable HUD program offices are available to provide technical assistance on the data and mapping tool and the user interface.

Issue: Do not relegate maps and tables to appendices and separate housing cost burdens. A commenter stated that the maps and tables should not be relegated to

appendices and that separating the data from the parts of the document in which program participants will conduct their analysis increases the risk that some key data points or geographic patterns will not be addressed in the analysis. Other commenters stated that the maps and tables should allow for separation on the basis of housing cost burdens, crowding, and lack of facilities, and that the housing cost burdens need to further filter out higher income households where higher costs are not the actual measure of distress.

HUD Response: The listing of maps and tables in appendices is a convenient organizational structure to advise program participants of the maps and tables that HUD is providing as part of the Assessment Tool for the purposes of public comment. HUD anticipates that the user interface and the data and mapping tool will allow the program participant to incorporate maps and tables directly into the body of the template. HUD appreciates the suggestion to improve the provision of data on housing needs and these comments will be taken into account in further refinement of the HUD-provided data.

Issues on Specific Content of Assessment Tool

Issue: Additional guidance needed about the community participation process. Commenters stated that this section of the template needs to provide more guidance for program participants and should afford stakeholders a means of assessing the thoroughness of a program participant's efforts to encourage and provide community participation. Another commenter requested that HUD revise the community participation section in a way that ensures program participants are accountable for community engagement. A commenter requested that HUD add a question that requires program participants that are unsuccessful in eliciting community participation to assess possible reasons for low participation rates, stating that such an explanation is

particularly important when historically underserved populations exhibit low participation rate.

Other commenters stated that the program participants should be required to list the organizations they consulted, and further to provide a detailed list of the specific participation activities and the comments received or delivered at public hearings so that advocates can assess if the groups that participated represented a balance of opinions. Some commenters stated that program participants should be required to report on the discussions with residents of public and assisted housing and residents of R/ECAPs in places where community revitalization efforts existed or are planned to be undertaken in order to determine if residents wish to remain in their homes and communities or to relocate to areas that may offer other opportunities. A commenter stated that community participation should be given as much weight, if not more, than the data analysis conducted by program participants

HUD Response: HUD appreciates the many comments that it received on the community participation process. These comments and the earlier comments on community participation addressed in this preamble appear to underscore the importance of the community participation that program participants will obtain and consider in producing a meaningful assessment of fair housing. With respect to certain of the recommendations made by the commenters, the Final Assessment Tool does ask program participants to list the organizations with which they consulted, to describe the types of outreach activities undertaken and dates of public hearings or meetings held, and to explain how these outreach activities were designed to reach the broadest audience possible. In addition to these changes, HUD has provided additional instructions

pertaining to the community participation process. The community participation process required for the AFH is largely based on longstanding community participation processes and outreach in the Consolidated Plan and Public Housing regulations. These are processes with which program participants are well familiar and have long undertaken. For these reasons, HUD does not find, at least at this time, which is the outset of the AFH process, that more requirements beyond the additional questions added in the Final Assessment Tool need to be imposed.

Issue: HUD must accurately address individuals covered by the AFH.

Commenters stated that the Assessment Tool needs to better clarify who will be covered by the AFH, particularly populations that do not fall under current protected classes. They stated that the template could be improved by clearly delineating which groups are required to be focused on, as well as providing guidance on how to engage with each group. Commenters stated that the Assessment Tool inappropriately elevates persons on the basis of income to a protected class. Other commenters stated that HUD must be diligent in making sure that racial and ethnic groups are consistently identified in the Assessment Tool and all AFH materials. Other commenters stated that all groups need to be treated the same in the Assessment Tool, stating as an example that immigrants should not be treated differently from native born residents, and women should not be treated differently from men.

HUD Response: The AFH covers protected classes under the Fair Housing Act, and these classes are identified in the instructions accompanying the tool, and addressed in the Assessment Tool. HUD has added a question to the Fair Housing Enforcement, Outreach Capacity, and Resources section of the Final Assessment Tool, which asks

program participants about any protected characteristics covered by State or local fair housing laws. HUD believes the revised instructions better guide program participants in addressing questions pertaining to the various protected classes under the Fair Housing Act.

Issue: Information required by the Analysis Section is not reduced by fewer questions. Commenters stated that while it appears there are fewer questions, the consolidated questions require no less information than was previously being requested. Other commenters stated that compound questions make it difficult for stakeholders to extract the information they need from the AFH and increases the likelihood that certain questions may not be answered and may not allow for program participants to think critically about these issues and devise effective and creative strategies to advance true change. Another commenter stated that many of the questions are still very broad and complex, and consolidation only adds to the complexity.

HUD Response: HUD appreciates these comments and on further review, HUD could see that certain questions were too broad. HUD has restructured several questions to better clarify the information sought.

Issue: Provide more targeted questions, and seek specific information from program participants. Commenters stated that the Assessment Tool should contain more exact questions to allow program participants to better describe their selection and rationale for their fair housing strategy. Commenters stated that many questions are open-ended and will require program participants to make assumptions. Other commenters stated that HUD should provide more specific, guided questions with the appropriate guidance as to the types of data sets for each question.

Other commenters stated that “additional information” questions should require more specific information from program participants; that program participants should describe efforts that are planned, have been made, or that are underway to preserve project-based section 8 developments at risk of opting out of the program, or other HUD multifamily-assisted developments from leaving the affordable housing stock due to FHA mortgage maturity. Commenters also stated that program participants should be required to describe such efforts with respect to LIHTC developments, including at Year 15 and beyond Year 30.

HUD Response: HUD appreciates these comments. These commenters stated similar concerns expressed by commenters in the preceding issue. Again, HUD has strived to structure questions so that they are more targeted, and solicit more specific information from program participants. HUD has also revised the “additional information” questions in each section to allow program participants to include relevant information about “activities such as place-based investments and mobility options for protected class groups.” HUD has included these “additional information” questions to provide program participants with the discretion and latitude to include any other relevant information they wish to provide.

Issue: The Analysis Section does not reflect a balanced approach. Commenters stated that the choice of long-time low income residents, especially residents who are members of protected classes, to remain in their publicly supported affordable housing in communities where they have social, cultural, and language ties, even if those communities are racially or ethnically segregated, is not accounted for in the Assessment Tool. Commenters stated that the Assessment Tool should specify that “displacement”

includes both direct displacement, resulting from acquisition and demolition as well as economic displacement caused by increased rents and evictions. Other commenters stated that because the analysis section only raises questions about racial and ethnic concentrations of poverty and disparities in access to opportunity the template could be contrary to the AFFH final rule by suggesting that there is a prohibition on the use of resources in neighborhoods that have such concentrations or that lack opportunities. Commenters stated that the Assessment Tool must provide guidance reflecting that the obligation to affirmatively further fair housing means preserving affordable housing or revitalizing areas of racial or ethnic concentrations of poverty, as well as enhancing access to opportunity. A commenter stated that the AFH and the final rule do not include safeguards ensuring that a balanced approach be taken. Another commenter stated that publicly supported housing and disparities in access to opportunity sections should foster a more balanced approach. A commenter stated that it is important to make a concerted effort to continue investing in R/ECAPs to ensure communities thrive and reap the benefits of urban change.

HUD Response: HUD appreciates these comments and made a number of key changes to the Assessment Tool to better reflect the balanced approach to fair housing planning as discussed in the preamble to the final AFFH rule. These changes and clarifications include additional references to housing preservation, community revitalization efforts, and mobility options to emphasize the importance of a balanced approach in overcoming fair housing contributing factors and related fair housing issues, in order to ensure fair housing choice and eliminate disparities in access to opportunity.

Issue: The Assessment Tool relies on a disparate impact analysis. Commenters

stated that the Assessment Tool relies on a disparate impact analysis, requiring communities to review their policies and practices and assess their outcomes, even if these policies and practices are facially neutral. These commenters stated that based on the recent Supreme Court decision in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 576 U.S. ____ (2015), the AFH must be able to establish a causal connection between the policy or practice and disparate impact.

HUD Response: HUD disagrees with these commenters and notes that the analysis required to determine whether a policy or practice violates the Fair Housing Act because it has an unjustified disparate impact is not the same as an analysis of the fair housing issues and contributing factors that a program participant would address through a goal to affirmatively further fair housing pursuant to HUD's AFFH rule. In conducting an AFH, the program participant need not prove that a policy or practice has an unjustified disparate impact in order to identify fair housing issues, factors that contribute to those issues, and goals to affirmatively further fair housing. However, HUD notes that should a program participant find, as part of its assessment of fair housing, that a particular group is facing discrimination in violation of the Fair Housing Act because of the unjustified disparate impact of one of its policies or practice, HUD would certainly expect the program participant to take prompt steps to remedy such discrimination. If such discrimination did not involve a policy or practice of the program participant, but instead involved another individual or entity covered by the Fair Housing Act, the program participant should bring such discrimination to HUD's attention.

Issue: The Assessment Tool is challenging for rural areas. Commenters stated

that the required analysis will be challenging for rural areas because of the limited availability of some basic opportunities. Commenters stated that in these areas there is little public transportation and personal transportation is a dominant variable in settlement patterns, creating or diffusing population concentrations. The commenter explains that mobility affects the other opportunities, such as jobs or the choice of school system.

HUD Response: HUD appreciates that program participants in rural areas may be challenged because of the greater undeveloped area and generally lower population that may present challenges in assessing fair housing. HUD will continue to work to provide additional guidance for program participants with regard to rural data and analysis issues. HUD agrees that the issue of public transportation versus personal transportation is worth consideration and has added instructions addressing this issue in the Disparities in Access to Opportunity section of the Final Assessment Tool. HUD has also revised the transportation data it is providing to include two indices—the transit trips index and the transit cost index, to better reflect access to affordable transportation in a variety of settings.

Issue: The Disability and Access Section needs additional revisions. Commenters stated that in looking at the population profile of persons with disabilities, the analysis should include examples of sources of local data and local knowledge concerning the population of persons with disabilities to help guide program participants in accessing such information. Commenters stated that Question 2(a) in the Disability and Access section should read “individuals with mobility disabilities,” rather than “individuals who use wheelchairs,” and this section should include a description of efforts to ensure that

new construction complies with the accessibility requirements of the Fair Housing Act and Section 504. A commenter stated that the analysis in this section would benefit from an assessment of the extent to which persons with disabilities are more likely than other groups to experience housing cost burden, overcrowding, and substandard housing, as well as what the greatest housing burden for persons with disabilities is in the jurisdiction and region. The commenter stated that the analysis should also include an assessment of the extent to which persons with disabilities experience disparities in access to environmentally healthy neighborhoods and to employment. Other commenters stated that even though there is a separate section on disability and access issues, including *Olmstead*, program participants should be required to analyze these issues throughout the AFH.

HUD Response: HUD has made revisions to the Assessment Tool and the instructions to address many of these comments, including identifying possible sources of local data and local knowledge program participants may use to conduct their assessments of fair housing. HUD declined to substantially modify the structure of the Final Assessment Tool by scattering questions related to disability and access issues in each section to allow program participants to complete a more focused assessment of the fair housing issues faced by persons with disabilities, but has included additional questions in response to commenters related to homeownership and disproportionate housing needs.

Issue: Important required analyses are missing from the Assessment Tool. Commenters identified certain analyses that they stated were not covered in the Assessment Tool, or not adequately covered and should be included in the Assessment

Tool as required analyses. Commenters stated that the template does not contain a meaningful discussion of homeownership and mortgage lending, and requested that HUD provide data on the federal mortgage tax deduction to estimate the proportion of homeowners that qualify for the deduction. Commenters suggested that program participants be required to analyze the trends of homeownership for each protected class and how that has changed over the past five years, including an analysis of how homeownership may result in segregation among homeowners, the ability to access to homeowners insurance, disparate foreclosure patterns, and the comparative maintenance and management of foreclosed properties in communities of color.

Other commenters recommended that the transportation analysis be required to cross-reference to Title VI, environmental justice, and other civil rights obligations under federal transportation guidance, including but not limited to relevant Federal Transit Administration circulars. Commenters stated that an analysis of LIHTC properties should be required for all program participants so that patterns of the distribution of government assisted housing is placed in the proper context, stating that LIHTC properties are often concentrated in certain neighborhoods and that there is an unacceptably high level of segregation in and among LIHTC properties. Commenters stated that an analysis of patterns of location and segregation within each government assisted housing program is an important analysis that must be included in the AFH. Commenters added that this analysis should be required for all program participants on a regional level in each AFH so that the pattern of government assisted housing distribution is placed in context.

Commenters stated that the Assessment Tool does not properly recognize the

changing factors of majority-minority localities that are experiencing an urban renewal renaissance where higher income and non-minority populations are migrating from the suburbs to urban centers of large cities. Commenters stated that the analysis of disparities in access to opportunity should include an analysis of rates of voter registration and participation, representation by different racial and ethnic groups on elected and appointed boards and commissions, and representation among staff in the school district, police force, and other municipal departments. These commenters also stated that exposure to adverse community factors should include a description of public health issues and health disparities among neighborhoods within the jurisdiction and between the jurisdiction and region, including disparities in low birth weight, infant mortality, sentinel health conditions, deaths due to fire, homicide, and gun violence, pedestrian auto fatalities, rates of premature death, and life expectancy. Commenters also advised that environmental factors should be included, such as water pollution, flooding caused by loss of wetlands, and mobile sources of air pollution.

HUD Response: HUD agrees with commenters that recommended inclusion of homeownership and mortgage lending and HUD has added questions on homeownership to certain sections of the Final Assessment Tool and included an additional contributing factor of “lending discrimination.” HUD has also enhanced instructions pertaining to transportation to help program participants better identify barriers to transportation opportunities. With respect to requiring an analysis of LIHTC properties of all program participants, LIHTC is the primary financing tool for affordable housing in the United States. The Final Assessment Tool retains the same analysis of LIHTC properties as the Revised Assessment Tool. HUD did not agree with the commenters that the questions in

the publicly supported housing section should be changed. The questions were carefully worded to match the program categories (e.g., public housing, LIHTC, etc.) for analysis, as well as the analysis of individual buildings and developments within program categories. With respect to the myriad of other factors recommended by the commenters, HUD has not added the majority of factors, such as low birth weight, infant mortality, deaths due to fire, pedestrian auto fatalities, and rates of premature death. However, program participants are permitted and encouraged to include any information that they believe to be relevant to assessing fair housing issues and contributing factors in their jurisdiction and region.

Issue: Assessment Tool does not use or refer to geographic areas and geographic patterns appropriately. Commenters stated that HUD has overemphasized the geographic patterns analysis in the disproportionate housing needs section. Commenters stated that the emphasis of this section raises concerns, as it implies that small geographic areas with the greatest housing needs should be the primary recipients of additional low income housing assistance, while small geographic areas with the least need are “off the hook.” Commenters recommended eliminating this section or replacing it with a more meaningful regional fair share analysis. Other commenters stated that HUD should not conflate location with other factors that are unrelated to housing.

HUD Response: HUD disagrees with these commenters and believes that an analysis of disproportionate housing needs in the jurisdiction and region is a necessary component of the assessment of fair housing.

Issue: Restore the Mobility Section to the Assessment Tool. Several commenters requested that HUD add the section on mobility and Housing Choice Vouchers (HCV)

back into the template. A commenter stated that omitting a discussion of aspects of the program that relate to mobility that PHAs are required to use for fair housing planning would be akin to not asking a local government to discuss its site selection policies with respect to the developments that receive HOME funds. Other commenters stated that even if an entitlement jurisdiction is not collaborating with a PHA, they still have a stake in HCV mobility issues and a policy toolkit they can use to help overcome barriers.

HUD Response: In the Revised Assessment Tool, HUD made the decision to address many issues related to mobility in the contributing factors including in an expanded contributing factor on “Impediments to Mobility,” rather than in the publicly supported housing analysis section. The term “mobility” can include mobility for Housing Choice Voucher recipients as well as unassisted persons and families. While HUD has not included a separate section on mobility in the Final Assessment Tool, the additional information question in several subsections of the analysis references mobility. The Compare Assessment Tool reflects the many additional places where HUD requires program participants to consider mobility options and other considerations for housing choice vouchers.

Issue: Include a reference to publicly supported housing in all sections of the Assessment Tool. Commenters stated that publicly supported housing should be consistently referred to throughout the template and that all categories of publicly supported housing should be included in each question.

HUD Response: HUD declines to include references to publicly supported housing in each section of the Final Assessment Tool. Similar to HUD’s response to commenters’ requests that disability and access issues be references throughout the

template, HUD believes that a designated section on publicly supported housing will provide a more focused and in-depth analysis of the fair housing issues faced by residents of publicly supported housing. HUD notes, however, that some specific questions related to publicly supported housing are included outside of the designated section on publicly supported housing—including the disability and access and the disproportionate housing needs sections.

Issue: Require examination of fair housing compliance. Commenters stated that HUD should require program participants to examine various types of complaints and other evidence that point to trends or emerging issues in fair housing compliance. Commenters stated that additional questions should be added to the Fair Housing Enforcement, Outreach Capacity, and Resources section of the template, and that these questions should capture information about any protected class under State or local law. Other commenters suggested that jurisdiction should be required to identify fair housing or other civil rights organizations operating in their area so that these organizations can be involved in the process.

HUD Response: HUD agrees with some of the suggestions made by commenters and has added additional questions and instructions to the Fair Housing Enforcement, Outreach Capacity, and Resources section of the Final Assessment Tool.

Issue: The Demographic Summary should clearly indicate demographic patterns. Commenters stated that the demographic summary should more clearly indicate which demographic patterns and trends should be described, including increases and decreases in the number of census tracts with greater than 20 percent, 30 percent, and 40 percent poverty, and increases or decreases in the number of persons residing in such census

tracts. Another commenter stated that it appears that neighborhood demographics can shift in relatively short periods of time, and asked about the risk that the lag in data availability, which appears to be 2-3 years at minimum, leads to outdated estimates.

HUD Response: HUD agrees with some of these commenters that additional clarity regarding the types of demographic trends that program participants are expected to analyze is necessary. Accordingly, HUD has provided additional instructions for this section to better explain what program participants must analyze in this portion of the Final Assessment Tool. With respect to the latter comment, HUD recognizes that the data being provided may not always be the most recent available or may not be as current as actual local conditions. HUD recognizes that a program participant's assessment of fair housing issues will reflect the data that HUD provided as well as any information revealed through local data and local knowledge, including information made available to the program participant in the community participation process.

Issue: Contributing factors are confusing and often contradictory. Certain commenters stated that the focus on contributing factors with respect to housing segregation, both community-wide and in specific government housing programs, is consistent with the history and purpose of the Fair Housing Act, and they stated that such focus is a crucial step forward and will help program participants engage in constructive analyses to comply with their Fair Housing Act obligations. However, other commenters stated that the template is confusing in how it describes factors that may contribute to fair housing issues. Other commenters stated that many of the factors are ambiguous and potentially contradictory.

While commenters stated that it is helpful that HUD has identified factors to be

analyzed, the commenters stated that the list and descriptions of factors are characterized in ways that assume there is always a fair housing impact. Commenter stated that any potential bias should be removed. Commenters recommended that the list of contributing factors be referenced as “Factors to be Considered.” Other commenters stated that the term “contributing factors” continues to suffer from the same lack of underlying validity, resulting in the creation of policy on the basis of incomplete information and personal perceptions, casting doubt on the Assessment Tool’s ability to truly increase fair housing choice.

Commenters stated that market driven forces should not be included in the list of contributing factors, because “location of employers” is an important issue driven by the free market, and that the factor of displacement of residents due to economic pressures is ill conceived. Commenters stated that there are inconsistencies between the lists of contributing factors in Options A and B and they must be reconciled in the final version. To add some clarity to contributing factors, a commenter recommended that HUD include a general statement that contributing factors may differ depending on local context.

HUD Response: HUD believes the Final Assessment Tool reflects (as highlighted by the Compare Assessment Tool) the many changes made in response to public comment, to enhance clarity of the contributing factors. Many of the changes were made in the descriptions of and the instructions for selecting the contributing factors. With respect to commenters’ concern that the list and descriptions of factors are characterized in ways that assume a fair housing impact, that is in fact the purpose of HUD’s identification of contributing factors—to assess their impact on related fair

housing issues. The Assessment Tool is unambiguous that the contributing factors listed by HUD are factors to be considered by the program participant in conducting the assessment – not predetermined factors that program participants are required to select even when they are not applicable. However, HUD did change the title of Appendix C to “Descriptions of Potential Contributing Factors.” Additionally, HUD agrees with the comment stating that contributing factors are not contributing factors until selected by program participants as being significant. Therefore, HUD has revised the language in each section of the Final Assessment Tool to read, “Consider the listed factors and any other factors affecting the jurisdiction and region. Identify factors that create, contribute to, perpetuate, or increase the severity of [segregation, R/ECAPs, disparities in access to opportunity, or disproportionate housing needs.]”

With respect to commenters’ request that market driven forces be removed from the list of contributing factors, HUD disagrees and has not removed these factors. Such factors may have fair housing implications and are included for program participants to consider as part of their analysis.

Issue: Restore certain contributing factors removed in the Assessment Tool provided in the 30-Day Notice, and include certain additional factors. Commenters stated that HUD eliminated critical contributing factors from the Assessment Tool that were the subject of comment for 30 days and these contributing factors should be restored. Commenters stated that HUD eliminated the following important contributing factors from the Assessment Tool: foreclosure patterns; major private investments; residential steering; and the availability of units with two or more bedrooms. Commenters further stated that there are contributing factors that should be added to the lists in the

segregation/integration and R/ECAPs sections of the template. A commenter recommended that State and local funding be included as contributing factors under the “other” category. Commenters provided lengthy lists of additional contributing factors that they recommended be included in the Assessment Tool.

HUD Response: HUD evaluated the inclusion of additional contributing factors and factors previously included, but removed, from the Revised Assessment Tool. HUD determined that many of the issues raised by commenters concerning the contributing factors were similar to existing contributing factors and HUD modified the descriptions of existing contributing factors to include such concerns. HUD did include one new contributing factor—“lending discrimination”—in response to requests from commenters. Note, however, that program participants are required to identify contributing factors outside of the list provided in the Final Assessment Tool if those factors are significant.

Issue: Restore the three levels of significance for contributing factors. Commenters stated that the three levels of significance—highly significant, moderately significant, and not significant—should be restored in the analysis of contributing factors. Commenters stated that by requiring program participants to explicitly identify the significance of a factor would provide the public with a basis for raising objections to HUD reviewers. Commenters stated that this system provided a stronger basis for analysis, transparency, and accountability than the approach in the version of the Assessment Tool that was the subject of the 30-day notice.

HUD Response: HUD did not include the three levels of significance in the Final Assessment Tool. HUD wants to give program participants the flexibility to prioritize

contributing factors in a manner that works best for them. Commenters can prioritize contributing factors as highly significant, moderately significant or minimally significant, program participants can use a numbering system to prioritize contributing factors, or any other method of prioritization that program participants may wish to employ. The only requirement is that the prioritization method utilized by the program participant must prioritize significant contributing factors by giving highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.

Issue: Source of income discrimination should not be a contributing factor.

Commenters stated that there are many reasons for landlords to refuse tenant-based rental assistance and that the landlord's choice to avoid administrative burden should not be considered discrimination and should not be used as an example of discrimination.

HUD Response: HUD has included source of income discrimination as a contributing factor because regardless of the reasons why a landlord may refuse to accept payment for rent based on certain sources of income, such refusals are a common barrier to fair housing choice and access to opportunity for many persons who rely on such income to pay for housing, including many members of minority groups and many persons with disabilities. Source of income discrimination is, therefore, an important consideration in a fair housing analysis. In response to comments on this specific contributing factor, HUD amended the language to clarify that it may apply to either Housing Choice Vouchers specifically or more broadly to other sources of income, such as Social Security Disability Insurance. HUD further clarified the last sentence of the factor to state, "The elimination of source of income discrimination and acceptance of

payment for housing, regardless of source or type of income, increases fair housing choice and access to opportunity.” In addition, the description of the contributing factor on “Impediments to Mobility” was amended to add a reference to discrimination based on source of income.

Issue: Include strategies and actions in the Assessment Tool. Commenters stated that program participants should include their strategies and actions to implement the goals and priorities of the Assessment Tool, even though the final rule calls for strategies and actions only in the consolidated plan or PHA plan, or that, at a minimum, there should be an opportunity for program participants to mention specific strategies that can connect with the Consolidated Plan and the PHA plan. Commenters stated that providing a set of recommended actions in the Assessment Tool would more firmly link the AFH to the subsequent planning processes. Other commenters requested that HUD provide examples of effective fair housing strategies and evidenced-based best practices.

HUD Response: Program participants are free to include in the Final Assessment Tool strategies and actions to implement the priorities and goals set in their assessments of fair housing. However, HUD declines to mandate such inclusion. HUD believes that the inclusion of strategies and actions in the consolidated plan and PHA plan allows for full consideration of needs, resources, and objective of program participants. As provided in the final AFFH rule, the strategies and actions in the consolidated plan and PHA plan must be informed by the goals and priorities in the AFH.

Issue: Recommended goal-setting changes. Commenters requested a number of changes and clarifications to the Fair Housing Goals and Priorities section and its instructions. Commenters stated that an additional column for “Timeframe” should be

added to the goal-setting table. Commenters stated that this would provide a prompt to program participants to include a timeframe for achieving fair housing goals. Other commenters suggested that HUD establish specific metrics and timeframes for evaluating progress toward meeting fair housing goals. Other comments stated that while the formulation of goals is appropriately left with the program participants, HUD should ensure that examples of goals should be sufficient and diverse enough to aid program participants in developing goals to meet the needs of their communities. Other commenters stated that guidance on goal setting with examples is critical.

Commenters requested that HUD require more than one goal and require robust and specific goals. Commenters stated that it is highly unlikely that a local government that sets just one goal would be doing enough to meaningfully address particularly complex issues like exclusionary zoning.

HUD Response: HUD appreciates the suggestions made by commenters and has made changes to the Final Assessment Tool based on these suggestions. HUD has included “timeframe for achievement” as part of the metrics and milestones column of the goal-setting chart, and has added an additional column for “responsible program participants.” HUD recognizes that events may occur that make the metrics and milestones unachievable in the timeframe for achievement set by program participants; nonetheless, program participants must still take meaningful actions that address goals to affirmatively further fair housing. With respect to requiring program participants to establish more than one goal, this issue was addressed in the AFFH final rule, and HUD stated that it believes it would be a rare situation in which a program participant has only one goal but that HUD does not disregard the possibility that a program participant may

identify a single contributing factor and have only one goal for addressing that contributing factor, or that a program participant that has more than one contributing factor may have the same goal for addressing each of those contributing factors. HUD further stated that it is interested in the substance of the goals and how a program participant's goal or goals would address contributing factors and related fair housing issues.

By providing data and a framework for analysis, however, the AFH is intended to assist program participants in prioritization of fair housing contributing factors that inform policies and how best to allocate resources to meet identified local needs and comply with their duty to affirmatively further fair housing.

“A basic tenet of planning and performance management is recognition of "external factors" and other barriers to achieving goals, and which are beyond an organization to control (See, e.g., the Federal Government Performance and Results Act). This rule allows grantees to identify such barriers. Included in such considerations is the identification of funding dependencies and contingencies.” The purpose of the AFH process is to set goals that will lead to meaningful actions that affirmatively further fair housing.

With respect to providing examples of goals, HUD included such examples in the Guidebook.

Issue: Vulnerability of program participants to litigation. Commenters stated that once a program participant has set goals, the program participant may be left vulnerable to litigation based on its ability to meet its goals. Other commenters stated that without concrete guidance and safe harbors, the Assessment Tool does not remedy the uncertainty

about the legal liability of program participants.

HUD Response: HUD emphasizes once again that the AFH process is a planning process, and the goals are objectives the program participant will strive to achieve. HUD recognizes that events may occur that may make the goals unachievable or unachievable within the timeframe initially established by the program participant. In the preamble to the final rule, since program participants are required to affirmatively further fair housing, HUD encouraged program participants to set goals that they believed they will be able to achieve.

Issue: The Assessment Tool should include detailed guidance. Commenters stated that by including detailed guidance in the Assessment Tool, HUD will minimize the need for program participants to toggle between the final rule, subsequent guidance, and the Assessment Tool. Other commenters stated that HUD should provide additional guidance on the analysis of the fair housing issues and the formulation of goals, either through more comprehensive instructions or through a frequently-asked-questions (FAQ) document. Other commenters stated that clear definitions of terms, such as national origin, color, family status, are important for helping to reduce burden. Commenters stated that Appendix C is very helpful, but requested that HUD provide additional guidance on contributing factors, along with examples where possible, as more elaboration on certain factors such as land use and zoning would be helpful. Commenters further requested that HUD provide clarification on several areas, such as admissions and occupancy policies and procedures, including preferences in publicly supported housing; community opposition; deteriorated and abandoned properties; lack of affordable in-home or community-based supportive services; lack of affordable, integrated housing for

individuals who need supportive services; lack of State or local fair housing laws; land use and zoning laws; and location and type of affordable housing.

HUD Response: HUD appreciates the comments provided, and to the Guidebook complements the Assessment Tool. However, HUD has concluded that guidance is not appropriate for inclusion in the Final Assessment Tool itself or the instructions for completing the template. Official HUD guidance on AFFH and the Assessment Tool, such as the Guidebook, will be posted on the HUD Exchange website at <https://www.hudexchange.info/programs/affh/>.

Issue: Instructions need to be worded more clearly. Commenters stated that the instructions could be clearer by providing examples and more explanatory language. Commenters stated that while HUD did a good job of explaining the indices, the instructions could be clearer by providing more guidance on how to interpret them. Other commenters stated that the instructions related to disability and access “residency preferences” are ambiguous, stating that the instruction could either be referring to preferences that give priority for assistance to households that reside within a given jurisdiction or preferences that give priority to persons with disabilities. The commenters stated that the first type of preference raises serious fair housing concerns and often perpetuates residential racial segregation, while the second type may be a necessary component of a strategy to overcome the historical legacy of discrimination against persons with disabilities and to promote meaningful community integration.

Commenters stated that the descriptions of how to interpret the indices and dot density maps are helpful, and other commenters commended HUD for including a definition of “siting selection.” However, they stated while the term is correctly assigned

to new developments, the definition conflates the issue of siting with respect to existing developments and this could lead to confusion. Commenters added that LIHTC is not a siting mechanism, but instead the primary financing tool for both rehabilitation and new construction of affordable housing. Other commenters stated that the outline for the template and instructions are not consistent and make it difficult to refer back and forth between the documents. To be more helpful, commenters suggested that the instructions should specifically note where local data and local knowledge may be relevant and provide examples of the types of local data and local knowledge that may be helpful. Other commenter stated that the instructions should emphasize the fact that program participants are required to supplement their responses for all questions when local data and local knowledge are available, even though HUD data is provided.

HUD Response: As the Compare Assessment Tool reflects, HUD made considerable changes to the instructions to provide the clarity program participants requested, and to eliminate any contradictions identified by HUD.

Issue: Guidance is needed for assessing fair housing issues for persons living in institutional settings. Commenters stated that the Assessment Tool should identify examples of policies that encourage or discourage individuals with disabilities living in integrated settings. Commenters state that the revised Assessment Tool is a step backward with respect to this analysis and that without this type of guidance, program participants will not be able to undertake fair housing planning and will be unable to adequately assess and address the fair housing needs of persons with disabilities who are institutionalized.

HUD Response: HUD appreciates the comments and the need for guidance to

identify strategies to address fair housing issues for individuals with disabilities, including individuals with disabilities living in institutional settings. HUD is evaluating the need for guidance in a variety of areas, including the disability context, and has provided some examples in the Guidebook. In the Final Assessment Tool, the contributing factor of “lack of assistance for transitioning from institutional settings to integrated housing” addresses the policy concerns raised by commenters. In addition, HUD directs program participants to the “Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*,” located at

<http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

Issue: Clearly specify minimum requirements for acceptance of an AFH and HUD review of AFHs. Commenters stated that the Assessment Tool lacks clarity about the minimal expectations for program participants’ AFHs to be accepted by HUD. Commenters recommended these requirements and explicit evaluation criteria be included in the Assessment Tool. Another commenter stated that HUD has not publicized a description of the standards it will use to accept or non-accept AFHs. Commenters requested that the standards for monitoring compliance be made public. Other commenters recommended that the “Comments” section on the cover page include a specific checklist of key compliance items.

Commenters asked how HUD staff will review the AFH, including the contributing factors, and what metrics HUD staff will use to ensure clear and consistent review. Another commenter stated that metrics are needed to help HUD staff in reviewing a submitted AFH, and that similarly, metrics and benchmarks for contributing

factors should be provided to help program participants and HUD staff to evaluate them. Other commenters requested that HUD identify the HUD reviewers of the AFH expressing concern that review may be conducted by an employee who does not have direct knowledge of the core functions of the program participant. Another commenter stated that the underlying principal behind the AFH must be to establish a causal connection between the policy or practice and the disparate impact. The commenter stated that Justice Kennedy has said that, “it may be difficult to establish causation because of the multiple factors” that go into a particular decision. Commenter suggested that this is the standard HUD should apply to the analysis in the AFH

HUD Response: The AFFH final rule, in § 5.162, “Review of AFH,” sets forth standards under which HUD will review an AFH. Section 5.162(a) provides that HUD’s review of an AFH is to determine whether the program participant has met the requirements for providing its analysis, assessment, and goal setting, as set forth in §5.154(d). Section 5.154(d) of the AFFH regulations specifies the minimum required content of the AFH, which is a summary of fair housing issues and capacity, analysis of data, assessment of fair housing issues, identification of fair housing priorities and goals, strategies and actions planned to be taken by the program participant, and a summary of the community participation process. For each AFH submitted after the first AFH submission, the AFFH regulations provide that the program participant must provide a summary or progress achieved in meeting the goals and associated metrics and milestones of the prior submitted AFH, and must identify any barriers that impeded or prevented achievement of the program participant’s goals.

In § 5.162(b) HUD provides the bases for HUD’s non-acceptance of an AFH.

This section provides that HUD will not accept an AFH if HUD finds that the AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete. In § 5.162(b)(i) and (ii), HUD provides, respectively, examples of an AFH that is inconsistent with fair housing and civil rights requirements, and an AFH that is substantially incomplete. For a regional or joint AFH, § 5.162(b) provides that a determination by HUD to not accept the AFH with respect to one program participant does not necessarily affect the acceptance of the AFH with respect to another program participant.

Through these regulatory provisions, HUD sets out the standard for review of AFHs. HUD is further committed to providing technical assistance and examples that will help guide program participants as to what it means to have an AFH that is substantially incomplete or one that is inconsistent with fair housing or civil rights laws. HUD can, and will, provide a checklist to help program participants ensure they have responded to all required elements of the Assessment Tool.

Issue: The certification statement for the Assessment Tool is too broad. A commenter stated that it is unreasonable to require broad certification of AFFH compliance without providing program participants with the standards HUD will use to assess that compliance. Another commenter suggested that HUD revise the certification language to read, “All information provided by the signatory entity in this assessment is true, complete, and accurate to the best of my knowledge and belief as of the date of this submission.” The commenter stated that this will better facilitate submissions for program participants that will submit a single AFH on behalf of multiple agencies.

HUD Response: Several changes were made to both the certification language

itself to align it with the certification provisions in the AFFH final rule and clarifying language was also added to the instructions accompanying the Assessment Tool that pertain to the certification. First, a new item was added to the certification, reflecting the AFFH final rule:

By this signature, I am authorized to certify on behalf of the program participant that the program participant will take meaningful actions to further the goals identified in its AFH conducted in accordance with the requirements in §§ 5.150 through 5.180 and 24 CFR 91.225(a)(1), 91.325(a)(1), 91.425(a)(1), 570.487(b)(1), 570.601, 903.7(o), and 903.15(d), as applicable.

Second, an instruction was added for the certification that states: “Please note, for a joint or regional AFH, each collaborating program participant must authorize a representative to sign the certification on the program participant's behalf. In a joint or regional AFH, when responding to each question, collaborating program participants may provide joint analyses and individual analyses. The authorized representative of each program participant certifies only to information the program participant provides individually or jointly in response to each question in the assessment. The authorized representative does not certify for information applicable only to other collaborating program participants' analyses, if any.” HUD believes this additional instruction will provide greater clarity and further encourage joint and regional AFH submissions.

As the AFFH final rule itself makes clear, joint and regional submitting agencies are both responsible for the joint portions of the Assessment , including joint goals, and for their own individual portions of the assessment, including their agencies individual

goals and priorities. They are therefore not responsible for other agencies' individual goals and priorities. As stated in § 5.156 (a)(3) of the AFFH final rule:

Collaborating program participants must designate, through express written consent, one participant as the lead entity to oversee the submission of the joint or regional AFH on behalf of all collaborating program participants.

When collaborating to submit a joint or regional AFH, program participants may divide work as they choose, but all program participants are accountable for the analysis and any joint goals and priorities, and each collaborating program participant must sign the AFH submitted to HUD. Collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

HUD encourages program participants to enter into joint and regional collaborations. Doing so can have benefits for both the analysis of issues, which often cross-jurisdictional boundaries and for setting goals. HUD will work with all joint and regional participating entities to facilitate their cooperation and further clarify the roles and responsibilities of these agencies through additional technical assistance and guidance documents.

III. Summary

In issuing this Final Assessment Tool, HUD has strived to reach the appropriate balance in having program participants produce a meaningful assessment of fair housing that carefully considers barriers to fair housing choice and accessing opportunity and how such barriers can be overcome in respective jurisdictions and regions without being unduly burdensome. HUD has further committed to addressing program participant burden by providing data, guidance, and technical assistance, and such assistance will occur throughout the AFH process.

Dated: December 22, 2015

Gustavo Velasquez, Assistant Secretary for
Fair Housing and Equal Opportunity

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